

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4703 of 1998

with

CRIMINAL MISC.APPLICATIONS No 4704, 4705, 4707 to
4710, 4712 to 4718 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SMT M SIVAKAMI W/O M MEYYAPPENKWALITY SPINING MILLS LTD.

Versus

BHARAT GINNING AND OIL MILL FACOTRY,

Appearance:

1. Criminal Misc.Application No. 4703 to 4705 & 4707 to
4710 & 4712 to 4718 of 1998
MR HJ SHAH FOR MR.RAJENDRA M KAPASI for Petitioner
MR MEHUL SHAH for Respondent No. 1
MR MAULIN RAWAL AND SP DAVE ADDL PUBLIC PROSECUTORS
for Respondent No. 2
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/07/1999

ORAL JUDGEMENT

#. Rule. Mr.Mehul Shah, learned advocate for the Respondent No.1, Mr.Maulin Rawal, learned APP and Mr.S.P. Dave, learned APP for respondent No.2 waive service of rule. This group of petitions arises out of order that came to be passed by the learned JMFC, Wankaner in respect of the application given by the present petitioner to quash the proceedings and discharge the petitioner who is one the accused persons in the respective complaints, which came to be filed by respondent No.1 herein viz. Bharat Ginning & Oil Mill Factory and Jalaram Industries respective petitions under Section 138 of the Negotiable Instrument Act. The said application was rejected and hence the petition.

#. The quashing of complaint is sought in exercise of powers under Section 482 of the CrPC by the original accused No.5 - the present petitioner on the ground that she is only a Director of the accused Company and not involved in the day to day affairs of the company and she cannot be considered as "person in charge of or responsible to the company for conduct of the business of the company as contemplated under Section 141 of the Negotiable Instrument Act". It is further contended that she is aged and ailing and therefore also she deserves to be exonerated by quashing the complaint against her.

#. Mr.H.J.Shah, learned advocate appearing for the petitioner submitted the contentions raised in petition. According to him, the learned Magistrate has not considered the arguments advanced on behalf of the petitioner. The Resolution dated 24th April, 1987 which was produced before the Magistrate has also not been considered by him. There seems no participation by the petitioner. There is no specific allegation about petitioner's participation in business. There is no allegation against the petitioner that the petitioner is involved in day to day affairs of the company and is a person in charge. Mr.Shah has pressed in service the following decisions.

- (1) N.Doraiswamy and another etc. vs M/s Archana Enterprise and etc.
- (2) Smt.Sharda Agarwal & others Vs. Additional Chief Metropolitan Magistrate & another, Allahabad High Court rendered in Crim.Misc. Application No : 4656 / 91 dated 27-11-1991.
- (3) Mahendra Pratap Singh Ratra Vs. M/s N.K.Metals 1999 (1) crimes 181 Delhi High Court.

#. He submitted that these decisions indicate that only a person who is responsible to the company for day to day affairs of the business of the company could be held responsible for the liability under Section 138 of the Negotiable Instruments Act as provided under Section 141 of the Negotiable Instruments Act.

#. Mr.Mehul Shah, learned advocate for the respondent No.1 has vehemently opposed this set of petitions. He says that the conduct of the petitioner is required to be seen. Earlier the petitioner had preferred petition before this Court which came to be withdrawn. Thereafter, a discharge application was preferred before the learned Magistrate and because that came to be rejected, the petitioner is before this Court. Mr.Shah has raised an objection that because earlier petition was withdrawn, this petition would not be tenable. Another contention raised by Mr.Mehul Shah is that the resolution that was relied upon by the other side was subsequent of lodging the complaint. The resolution relied upon here is only in relation to the operation of bank account and does not speak of anything as to administration and management of the company as to who is responsible for the management and therefore, this cannot help the petitioner for quashing of the complaint. Mr.Mehul Shah then further submitted that it is a question of evidence as to who is responsible and whether the petitioner was not responsible as contemplated in the proviso under Section 141 of the Negotiable Instrument Act. He has also taken this Court through the complaint particularly para-2 wherein it has been categorically alleged that accused No.2 to 7 are the authorized persons of the mill. What could this sentence mean, would a question of evidence and interpretation and therefore, he urged that at this stage, this Court may not exercise powers under Section 482 of the CrPC.

#. Mr.Rawal as well Mr.SP Dave appearing for the State state that appropriate orders may be passed.

#. Having taken into consideration the rival side contentions raised by the parties concerned, what transpires is that the complaint states that the accused No.2 to 7 (the present petitioner is accused No.5) are the authorized persons of the mill. It would not be proper to expect the complainant to reproduce advertatim the phraseology of the Section in question. What is tried to be conveyed by phrase 'authorized person/s' would be a matter of evidence and interpretation. Under these circumstances, the first contention that the

complaint is silent about averment that the present petitioner is not responsible for the business of the company cannot be entertained at this stage while deciding a petition for quashing of complaint. Secondly, the resolution which is relied upon by the petitioner dated 24th April, 1987 produced on record only indicates that it authorized certain persons to operate bank account. Operation of bank account in itself is not the only the business of the company. Section 141 contemplates person in charge of and responsible to the company for conduct of business of the company. Operation of Bank Account is only a part of the business or management of the company, ancillary to the main business and therefore non inclusion of the name of the petitioner in this resolution cannot be taken to indicate or mean, at this stage of quashing as sufficient to hold that the petitioner has discharged the burden as required under the proviso of Section 141 (1) of the Negotiable Instrument Act and therefore also this contention cannot be helpful to the petitioner. As regards the decisions relied upon by Mr. H.J.Shah in the case of N.DORAISWAMY (Supra), Madras High Court held that the company as well as person in charge and responsible to the company for the conduct of business of the company would be liable to the punishment. However, such officer can escape from this liability only if he proves that offence was committed without his knowledge or that he had exercised all due diligence to protect such commission of such offence. The petitioner is entitled to protection prima facie, because, for the reasons recorded above, the resolution that is relied upon, does not in itself indicate that the petitioner was not the person responsible to the company or conduct of the business of the company. It would be however, open to the petitioner to prove at the trial that she was not the responsible person as contemplated under Section 141 of Negotiable Instrument Act.

#. As regards the decisions in the case of SMT SHARDA AGARWAL relied upon by Mr.H.J.Shah, it may be noted that in that case the complaint did not say the petitioner / director of the company, was also in charge of the business of the company. Here as discussed above, the case is different. The complaint bears allegation against the accused - petitioner and therefore, this decision cannot be helpful to the petitioner.

#. In the case of MAHENDRA PRATAP SINGH RATRA (Supra) issue was that the cheques in question were issued by the Chairman and Managing Director of the accused company. There was no allegation that in the complaint or pre

summoning evidence, that the petitioner / director was at any point of time directly or indirectly in charge and responsible to the company for its business and therefore, it was held that the petitioner could not be roped in under Section 141 of the Act. But in the instant case, as discussed above, there is averment in the complaint and it would be question of evidence, therefore, to decide whether the petitioner was or was not responsible for the conduct of the business of the company.

##. Mr.Mehul Shah has also drawn attention of this Court to a xerox copy of certified copy of the decision rendered in Criminal Misc. Application No : 1380 of 1998 dated 4-5-1998 in relation to some complaints preferred by the petitioner which came to be withdrawn by the petitioner while reserving liberty to file appropriate application for discharge or dropping of application against them. He has also drawn attention of this Court to the decision of this Court in Criminal Misc. Application No : 4380 / 98 rendered on 24-11-1998. These petitions came to be withdrawn. Mr.Mehul Shah therefore urged that the conduct of the petitioners indicate a clear intention of delaying the complaints.

##. It is undisputed that the petitioner is a Director of the Company and therefore in absence of any other material to show that her case falls into an exception as provided for under the proviso to Section 141(1) of the Negotiable Instrument Act, petitions cannot be entertained and must therefore fail and are dismissed accordingly. Rule discharged. Interim relief stands vacated.

Date : 28-7-1999 [A.L.Dave, J.]

*kailash